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LIMITED EXEMPLARS AND THEIR USE IN FORMING EXPERT OPINIONS

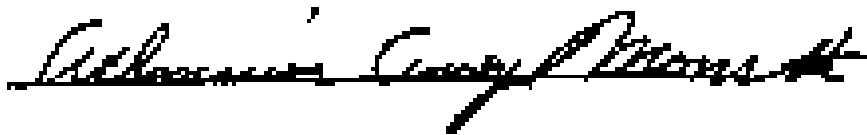
by

Jacqueline A. Joseph, CDE

FORENSIC ABSTRACT: This case report discusses signature genuineness and the problem of limited (deficient) exemplars. After an exhaustive search, one exemplar (written 45 years prior to the questioned signature) was found containing a compelling, fundamentally distinguishing feature. This older exemplar became useful for identification despite its age limitation. The other exemplars (31) were limited in usefulness. Testimony offered in court utilized the available observations from the limited exemplar supply. Applicable scientific principles of identification were used as well and led to the most appropriately reliable expert opinion of "inconclusive." From the bench, the judge ruled without extra time deliberating, in favor of the questionable signature's authenticity.

Key words: limited exemplars, pen scope, exemplar criteria: legibility, quality, quantity, comparability, admissibility. Case law: inconclusive opinion expert testimony.

The uncommon Greek name "Athanasios Andy Monstis" was seldom written by the decedent who regularly signed his nickname "Tom Monstis" throughout his lifetime. However, upon his death in 1996 at age 68, a will dated 9-18-92 bearing his uncommon three-name graphic unit signature of Athanasios Andy Monstis (See Figure 1) was brought forth by his son who claimed it was genuine. The existence of this will was previously unknown to the

A handwritten signature in cursive script, appearing to read 'Athanasios Andy Monstis'. The signature is written in dark ink on a light background. The first name 'Athanasios' is written in a more formal, upright cursive, while 'Andy Monstis' is more fluid and slanted. The signature ends with a large, sweeping flourish.

current wife of the decedent. She then contested it as false by claiming that the signature was forged, and substantiated her assertion by merit of the existence of a prior will in her possession. This will bore the uncontested nickname signature (the two-name graphic unit "Tom Monstis") executed in 1985 (7 years prior to the disputed will signature).

To support a reliable opinion resulting from a forensic examination of a signature, one aims to conform to the highest standards of scientific approach set forth in the field of forensic document examination. In comparing signatures for forensic purposes, an exemplar (also called a standard or control) is defined as an authentic sample acceptable or provable to the court as such, and one which is a valid comparison to the questioned signature.¹ Taking exemplar criteria into account, these limited exemplars were evaluated. In court, the concise description of the exemplars, their value and usefulness were offered.²

The following criteria were stressed regarding usefulness of exemplars in handwriting examination. The best exemplars³ are:

1. Of the same nature (same wording/spelling)
2. Legible
3. Sufficient in quantity
4. provable as authentic (size and source verified).
5. Contemporary in date.

To meet the first criterion, useful exemplars of the same nature as the questioned signature were needed. (See Figure 1 - The Questioned Signature). It was essential that these repeated the seldom written three-name graphic unit with the notable spelling of Athanasios Andy Monstis. Handwriting (signature) exemplars should recreate the identifying elements of the questioned writing with which they are to be compared.⁴ Because the writing of a an entire three-name signature is considered a whole unit of movement activity, the examiner would want to use comparable exemplars to obtain the most reliable group of observations.⁵

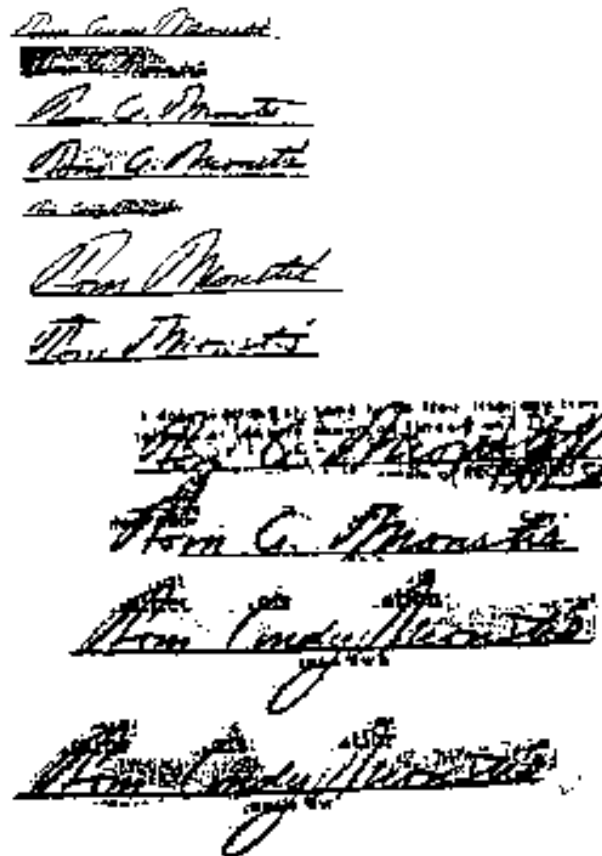


Figure 2

Exhibit A: The first-set exemplar signatures are limited for use in forming an opinion because they do not compare in wording to the questioning signature and most of them are illegible.

The disputed three-name graphic unit signature of Athanasios Andy Monstis was not observed in the first-set exemplar signatures (See figure 2) so the first criterion of exemplar usefulness of this exemplar group in conducting an examination for reliable observations.

The first-set of 12 exemplar signatures contained only the following nickname signatures:

Tom Andy Monstis

Tom A. Monstis

Tom Monstis

Also of critical importance regarding exemplars of same-name wording and spelling is pen scope. Pen scope is defined as the amount of writing done before a notable readjustment in movement or grip, or without a break in the progressive motor sequence.⁶ Pen scope adjustments can be observed by a knowledgeable examiner. However, in an attempt to forge, trace or otherwise write an imitation of another's signature, the pen scope adjustments can be very difficult to observe and actually duplicate.⁷

After an exhaustive search, one three-part exemplar of "Athanasios" was found and examined (See Figure 4). A compelling observation became available: the same penscope of the 5-letter unit "-asios" of "Athanasios" in the exemplar signature was also observed in the questioned signature written 45 years later. Observed additionally were the same letter forms, sizes, slant & inter/intra letter spacing.

The combination of the above-mentioned observations became an indication of common authorship. At this point in the examination, common authorship was further considered and indicated after the ruling out of a traced signature or cut-and-paste signature based upon the microscopic examination of the original document/signature.

Also notably, the questioned signature had the correct spelling of the uncommon Greek name. In order to replicate the spelling of "Athanasios Andy Monstis", one would need access to a seldom executed model or other background information.

Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Candy Monetti
Don Candy Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti
Don Monetti

Figure 3

Exhibit B: These exemplars are limited because they do not compare in wording to the questioned signature, and they may have been chosen by the opposing side in favor of their opinion.

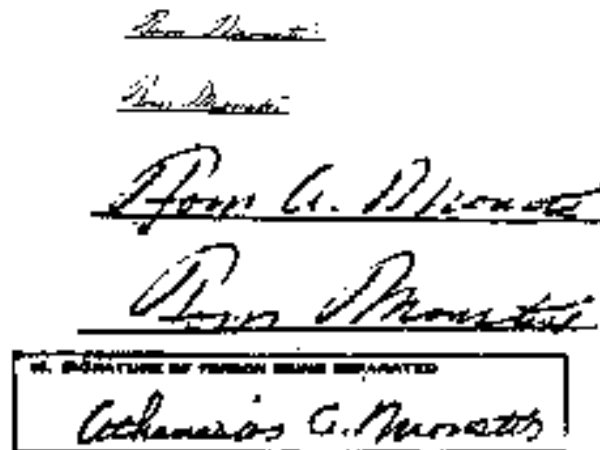
The object of the exemplars is to illustrate, fairly and completely, their author's writing habits. To do this, they must be legible - the second criterion. The legibility of the majority of exemplar signatures in the first set (See Figure 2) was quite poor. This rendered them unsuitable which further limited their use in the examination. The dark, unclear and distorted written images were the result of the process of photocopying from microfilm.⁸

Regarding the third criterion that exemplars should be sufficient in quantity, Osborn states that from five to 25 signatures should be used in the comparison process to clearly show the writing habits of the individual under investigation.⁹ A group of exemplar signatures submitted by the opposing counsel was also examined by this author. (See Figure 3). Although these 16 exemplar signatures certainly met the criteria of sufficient quantity and legibility, this examiner objected to

the fact that they did not meet the critical first criterion of same nature/wording of the three-name graphic unit previously discussed.

Further, in this case the individual selecting the exemplars was a party of interest. The selections could have been chosen with bias toward that person's claim.¹⁰ This examiner explained to the court the above mentioned limitations of this particular exemplar group (See Figure 3, Exhibit B). The court was advised that this exemplar group was considered not reliable and therefore was not further examined.

In considering the fourth criterion, that the exemplar must be provable as authentic, Harrison states it is essential that all standard comparison material be admissible as evidence.¹¹ Figure 4 shows a useful and provable group of four (4) undisputed signatures written on the 1985 will, and one (1) 1947 signature appearing on a US Army Discharge Form which was certainly written prior to the dispute.



The image displays five handwritten signatures. The first two are small, cursive signatures. The third is a larger, more stylized cursive signature. The fourth is another cursive signature. The fifth is a signature inside a rectangular box with the text "W. SIGNATURE OF PERSON BEING DECEASED" above it.

Figure 4

Exhibit C: The undisputed exemplar group is limited in quantity; however, its usefulness is due to the fact that the genuineness is undisputed by all.

The fifth and final criterion states that ideal exemplars should be contemporary in date with the questioned signature. None of the undisputed and useful exemplars were contemporary in date with the questioned signature.

Even though some of the other limitations discussed herein certainly apply to this group (Figure 4), the signatures were determined by this examiner to be the most reliable for use in the examination. The stability of observable features over time added weight and significant value. First, they yielded a valuable combination of the most compelling observations, which included but were not limited to comparable pen scope and lack of variation of letter size, form, slant and spacing. Second, this stability was more compelling especially considering the health conditions listed in the decedent's medical records.¹²

All things considered, in actually dealing with the very limited exemplar group in Figure 4, the indicators of common authorship were even more compelling given the time lapse of seven and 45 years, respectively. This was clearly demonstrated to the court within the context of the expert opinion of "inconclusive."

In conducting the necessary protocol of a reliability check¹³ each method of possible forgery was considered. Using the available objective indicators, the court was advised that no indicia of falsity, including tracing, and imitation (drawing), or simulation of the questioned signature, were observed. In summary, the available observations drawn from the limited exemplars indicated that the questioned signature was genuine. However, for a scientific approach in forming and supporting a reliable opinion, due to the limitations of the exemplars it could not be stated with certainty that the signature was genuine. The most reliable opinion was therefore "inconclusive". The court was advised that if an entire pool of useful and valid exemplars were available and examined, and if similar observations occurred, the reliable indicators would favor genuineness.

ENDNOTES

1. Questioned Documents, Albert S. Osborn. Nelson-Hall, Chicago, Ill. 1929, p.13.
2. Exemplars: Genuine Samples for Comparison with questioned Writings and Documents, Marcel B. Matley, Handwriting Services of California, San Francisco, CA. 1990, p.22.
3. Questioned Documents, Albert S. Osborn. Nelson-Hall, Chicago, Ill. 1929, pp. 27-29.
4. Evidential Documents, James V.P. Conway. Charles C. Thomas, Publisher, Springfield, Ill. 1959, p. 76.
5. Experiments with Handwriting, Robert Saudek. Reprinted by Books for Professionals, Sacramento, CA. 1978, p. AA/Glossary. See "Adjustments."
6. Journal of the National Association of Document Examiners, Vol 20. No. 1 Spring 1997, The Unidentifiable Handwriting by Jacqueline Joseph, CDE.
7. Experiments with Handwriting, Robert Saudek. Reprinted by Books for Professionals, Sacramento, CA. 1978, Chapter III, Authentic and Spurious Expression in Handwriting, pp. 127-188.
8. Evidential Documents, Albert S. Osborn. Nelson-Hall, Chicago, Ill. 1929, p.27.
9. Questioned Documents, Albert S. Osborn. Nelson-Hall, Chicago, Ill. 1929, p.27.
10. Reliability Testing of Expert Handwriting Opinions, Marcel B. Matley. Handwriting Services of California, San Francisco, CA. 1992, p.10.
11. Suspect Documents, Wilson R. Harrison, M.Sc., Ph.D. Nelson-Hall Publishers, Chicago, Ill. 1958, p.437.
12. The questioned signature was executed on 9-18-92. At that time Monstis was using many medications, including Dyazide, Vasotec, Tandate, Procardia XL, KCL daily. On 4-23-92 his medical records indicate a very severe and strange numbness in the fourth and fifth fingers of the right hand, forearm and upper shoulder. This hand was dominant and used for writing. See: #2 Matley pg. 16.
13. Reliability Testing of Expert Handwriting Opinions, Marcel B. Matley. Handwriting Services of California, San Francisco, CA. 1992.

CASE LAW

1. Aetna Casualty & Surety Co. v Nielsen, 217, 348 NW2 851 (1984); overruling in part First National Bank v Bolzer, 222 Neb 92, 382 NW2 328 (1986) At 328.

1. "Trial court's ruling in receiving or excluding expert testimony will be reversed only when there has been abuse of discretion."
2. Such ruling "must be viewed in light of judicially recognized fact that it is not possible to establish exact standard for determining qualifications of expert or skilled witness..."
3. Trial court did not err in admitting the handwriting expert.
4. "Weight of expert testimony is for trier of fact."

At 329. University professor who deciphered difficult handwriting testified as handwriting identification expert, although he gave no opinion but explained to jury what to compare, "including the slant, alignment, spacing, pen lifts, and feathering used in forming letters and words..line wavers found in tracings of writing but not in spontaneous writing."

2. U.S. v Currier, 454 F2 835 (1 Cir 1972) At 837. "Despite the erasure, the writing was visible to the naked eye and clear in the government's infrared photograph. The erased handwriting strongly resembled defendant's writing of the same words and figures on the settlement sheet of July 18. Although the government expert could not testify with certainty that the erased words were written by the defendant, there was sufficient evidence for the jury to believe they were."

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